



C.M.A.(MD).No.221 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 20.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.221 of 2019

and

Cross Obj(MD) No.3 of 2023

and

C.M.P(MD) No.1058 of 2023

C.M.A.(MD) No.221 of 2019:

The National Insurance Company Ltd.,
through its Branch Manager,
D.No.333-1, Chekkalai Road,
Karaikudi Nagar,
Sivagangai District.

..... Appellant/ 2ndRespondent

-vs-

1. Lakshmi
2. Deepa
3. Dinesh
4. Karthik

.... 1st Respondent/1st Petitioner
.... 2nd Respondent/ 2nd Petitioner
.... 3rd Respondent / 3rd Petitioner
... 4th respondent/ 1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2017 made in M.C.O.P.No.55 of 2015, on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.



C.M.A.(MD).No.221 of 2019

For Appellant : Mr.A.S.Mathialagan

For Respondents : Mr.K.Kumaravel

CROS.OBJ.(MD) No.3 of 2023:

1. Lakshmi
2. Deepa
3. Dinesh

.... Cross Appellants/ Respondents 1 to 3

-vs-

1. The National Insurance Company Ltd.,
through its Branch Manager,
D.No.333-1, Chekkalai Road,
Karaikudi Nagar,
Sivagangai District.

..... 1st Respondent/Appellant

2. Karthik

... 2nd respondent/ 4th Respondent

PRAYER: Cross Objection filed under Order 41 Rule22 of C.P.C, against the judgment and decree dated 19.04.2017 made in M.C.O.P.No.55 of 2015, on the file of the Motor Accident Claims Tribunal, Sub Court, Devakottai.

For Appellants : Mr.K.Kumaravel

For Respondents : Mr.A.S.Mathialagan

COMMON JUDGMENT

The present appeal has been filed by the Insurance Company challenging the quantum of Award passed by the Motor Accidents Claims Tribunal/ Sub Court, Devakottai.



C.M.A.(MD).No.221 of 2019

WEB COPY

2. According to the claimant, the deceased was running a Tea Shop and he was earning a sum of Rs.9,000/- (Rupees Nine Thousand only) per month. The Tribunal has accepted the said monthly income of Rs.9,000/- (Rupees Nine Thousand only) and after deducting 1/3rd amount towards personal expenses and after adding 30% towards future prospectus had taken the monthly income at Rs.8,700/- (Rupees Eight Thousand and Seven Hundred only) and thereafter applying the multiplier of “13” had arrived at a total compensation of Rs.13,57,200/- (Rupees Thirteen Lakhs Fifty Seven Thousand and Two Hundred only) for loss of income.

3. According to the learned counsel appearing for the appellant, though the claimants have pleaded that the deceased was running a Tea shop, no document has been placed before the Tribunal for establishing the same. Hence, he contended that the notional income of Rs.6,000/- alone shall be taken and not Rs.9,000/- as pleaded by the claimants.

4. Per contra, the learned counsel appearing for the respondents had contended that the auto driver had taken the injured to his home, had



C.M.A.(MD).No.221 of 2019

registered the FIR on the next day. In the said F.I.R, he has mentioned that the deceased was running a Tea shop. Charge Sheet has been laid under Ex.P.2. Charge sheet also refers to the effect that the deceased was running a Tea Shop. The wife of the deceased was examined as P.W.1. and she has categorically deposed that her husband was running a Tea shop. The auto driver who helped the injured to reach home, has been examined as P.W.2 and in his Chief Examination he has categorically pointed out that the deceased was running a Tea shop. The said aspect has not been contradicted in the cross examination.

5. In view of the above said facts, this Court is of the view that the claimants have sufficiently established the fact that the deceased was running a Tea Shop. Therefore, considering the fact that the tea stall is located within Karaikudi Municipality the monthly income taken by the Tribunal at Rs.9,000/- (Rupees Nine Thousand only) cannot be found fault with.

6. The Tribunal has rightly deducted 1/3rd towards personal expenses and added 30% towards future prospectus and has arrived at monthly income of Rs.8,700/- (Rupees Eight Thousand and Seven Hundred only). The



C.M.A.(MD).No.221 of 2019

WEB COPY

Tribunal has awarded a further sum of Rs.50,000/- (Rupees Fifty Thousand only) towards loss of love and affection to the children and a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) towards loss of consortium to the first claimant. The Tribunal has further awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards funeral expenses and a sum of Rs.5,000/- (Rupees Five Thousand only) was awarded for Ambulance expenses.

7. This Court does not find that the total award amount is in any way excessive and calling for the interference by this Court. Accordingly, this Civil Miscellaneous Appeal stands dismissed.

8. The claimants have filed a Cross Objection No.3 of 2023 seeking to enhance the compensation on the ground that the deceased was a Tea Stall owner and hence, the notional monthly income has to be fixed at Rs.15,000/- (Fifteen Thousand) per month. Even according to the claimants in the claim petition, the monthly income of deceased is only Rs.9,000/-(Rupees Nine Thousand only) which was accepted in entirety by the Tribunal. As far as the loss of consortium is concerned all the three claimants are entitled to a sum of



C.M.A.(MD).No.221 of 2019

Rs.40,000/- (Rupees Forty Thousand only) each and therefore, they were entitled to Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only).

However, the Tribunal has awarded a sum of Rs.1,25,000/- to the children as well as the wife of the deceased. Therefore, this Court does not find any reason to enhance the compensation in the Cross objection petition. Accordingly, this Cross Objection Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

20.04.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To
1. The Motor Accidents Claims Tribunal,
Sub Court, Devakottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD).No.221 of 2019

R.VIJAYAKUMAR,J.

ebsi

C.M.A.(MD)No.221 of 2019

20.04.2023